THE ANTIQUITY AND POWER OF Parliaments in ENGLAND.

Written by Mr. Justice *Doddridge* and several other Learned Antiquaries.

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The PREFACE,

Courteous Reader,

Here present thee with a few Sheets of the Discourses of very grave, reverend and learned Men in their times, one of them being a most honoured relation of my own: they fell into my hands very lately upon the death of a worthy Friend; and upon perusal I judged them fit for publick view; they are indeed Magnum in parvo; *short, but full of weighty matter, and treat of the Antiquity and just Power*

of our ancient and free Parliaments of England. *Give me leave to discourse a little of the honour and priviledges of this most high Court; a learned Lawyer of our own, saith of the Parliament, that it is a Court of very great honor and justice, whereof none ought to imagine any thing that is dishonorable; and that the makers of Laws, that is, Parliament-men, do always intend justice and verity: such was the high Opinion and esteeme of this great and eminent Court in former times; and it hath been the Opinion of our Ancestors, that to a Parliament rightly constituted, there ought to be a lawful Summons, a free Election, a true Return, liberty of Admission into the House, and a quiet Session there, with a*

Exact Collection, pag. 655, 723, 724.

a just freedome of speech and debate without fear or disturbance; these they accounted as the Essentials of a Parliament: if there be an errour in any of these, it soon declines, and loseth its true vigour and authority. As for priviledges of Parliament, they esteemed them to be of that absolute necessity, that if they were denyed or interrupted, it cannot act properly as a Parliament, no more then the Body without the Soul; Priviledge of Parliament being indeed the very forma quæ dat esse, *the Life and Soul of it. Sometimes this most honorable Court is called by* Bracton, Communis reipublicæ sponsio; *as in the entrance of his Book, where he writeth in this manner:* Lex vigorem ha-

c Lib. 8. f. 20. & lib. 9. in epist. f. 5.

hac quicquid de consilio & de consensu magnatum, & reipublicæ communi sponsione, authoritate Regis sive principis præcedente justè fuerit definitum & approbatum, *sometimes he calleth it*, Magna curia, *as in the second Chapter of his first Book, where that of new cases, whereof at this present there is no Law extant, he saith*, Si autem talia nunquam evenerint & obscurum & difficile sit eorum judicium, tunc ponantur judicia in respectu usque ad magnam curiam, ut ibi per consilium curiæ terminentur. *In the Register, in the form of all such writs as are grounded upon Statutes, it is called*, commune consilium regni, *as in the writs of waste & cessavit.*

W. 2. 13. d. 108. H.

It

It is said to be likewise the most high Court the King hath. Henry Huntington *seemeth to call it*, Magnum placitum; *for thus he writeth:* Fuit in nativitate sanctæ Mariæ magnum placitum apud Northampton, in quo congregatis omnibus principibus Angliæ, deliberatum est quod filia sua rediretur viro suo comiti Andegaviæ.

In the Books of Law there is no Original mention made of the first Ordinance or Erection of the Parliament; but the Laws of this Land esteeme it as a thing most ancient, and do refer the Originall thereof to time before any memory or certainty known; and hence is it that they say in 35 H. 6. 26. a. *that a custome may have his O-*

33 H. 6. 18. 7 H. 7. 16. a 19. H. 6. 63.

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riginal by act of Parliament: of which saying ensueth, That for as much as customes are to have their Commencements time out of mind; so likewise Parliaments in this Land have been before any memory thereof extant when they first began.

The personal attendance of such as are Members of the Parliament, is so necessary, that they ought not for any business be absent; and no one may be well missed, because he is a necessary Member; and for that reason, if one dye during the Parliament, another shall be chosen in his room, so that the whole number ought not to fail; whereof it ensueth, that the person of every such Member ought to be priviledged of Arrest at the suit of any pri-

26 H. 8. 60. a. Pl. 19. Dyer. Trewinnards case.

vate

vate perſon during the time that he is imployed about the affairs of the Realm; and ſuch priviledge hath been always granted by the King to the Commons at the requeſt of the Speaker, the firſt day of the Parliament.

And as this priviledge is that they ſhall not be arreſted; ſo likewiſe ſhall they which are already arreſted before the Parliament, have a writ of priviledge to the Sheriff, to ſet them at liberty; yea, although they are impriſoned upon an Execution; and the ſaid Execution ſhall be ſuſpended during the continuance of the Parliament, and then after they ſhall be taken again and impriſoned as before: and if the ſaid Sheriff do diſobey ſuch writ or meſſenger

38 H. 8. 60. a. Pl. 19. Dyer. 2 E. 4. 8. a.

ger us a Serjeant at armes sent for such prisoner, he is in danger of perjury, and also of imprisonment of his body, and ransome at the will of the King: and this was in ure in the Parliament holden 35 H. 8. against Rowland Hill and Stukely, Sheriffs of London, who were committed to the Tower for their contempt, for that they would not suffer to be at large George Ferrers, when the Serjeant at armes came for him: which Ferrers was imprisoned upon an Execution.

This priviledge is notified diversly, sometime by their publick Minister and Serjeant at armes, sometimes by writ, where if the Parliament be clear that the priviledge lyeth, they send their

their writ of priviledge, for otherwise the writ shall be a Habeas corpus cum causa, which writ is often granted before the Justices be agreed whether the priviledge do lye in the case in ma; and if they find it is not grantable in the case, then they remand the matter with a Procedendo.

In the Parliament holden the 28 Eliz. which began 27. one Mr. Martin a Burgesse of the house of Commons, was arrested in London twenty dayes before the said Session began: whereupon these questions were then debated: 1. Whether he should have the priviledge or no. 2. If so, then whether he should be absolutely freed of the arrest, or after that Session ended, whether he should be under ward a-

gain. 3. Whether he that did arrest him were punishable or not.

For the time, how long before the Parliament, and how long after, persons attendant should have their priviledge, it was thought by the whole house that it should be referred to the discretion of the house: for to put certainty therein, would breed inconveniences: for said Egerton Solicitor, If a Burgesse coming to the Parliament, or in the Parliament time be arrested, and by priviledge be discharged; after the Session ended, when he is again arrested, and presently cometh another Session, then must he be discharged again, and so continue perhaps eight or nine years, and the debtor cannot come by his

debt

debt: what course should be taken? for the debtors presence is still of Record in the said house: and in the former case the said Martin was discharged.

In the Parliament, Anno 27. Eliz. one Kerle was brought into the house of Commons for serving a Sub-pœna out of the Star-chamber upon a Burgesse; he was awarded to pay five Marks for his charges, and he absolutely dismissed.

Sir Robert Brandling made an assault in the North upon one Witherington of the house of Commons, in the Country before his coming to the Parliament: Sir Robert was sent for up by the house, and committed to the Tower.

One

One Gardiner a Burgesse of the Parliament committed to the Fleet by my Lord Keeper, was delivered, putting in bond that he should after the Parliament appear.

A Burgesse of Parliament a little before the end of the Parliament fell sick, and six weeks after the Parliament ended, when he was recovered, and to go into his Country, he was arrested; and yet notwithstanding he had his privilege.

28 Eliz.

Quære.

This not only the Burgesses and Knights shall have privilege; but also their attendant Servants. One Mr. Hall a Burgesse had his man in Execution for debt, and was delivered.

28 Eliz.

The said liberty for Servants

is mentioned in the Statute of 8 H.6. chap.1. where it is ordained, that such as shall be called to the Conversation by the Kings writ, and their Servants and Familiars, shall for ever hereafter fully use and enjoy such liberty, or defence, in coming, tarrying, and going, as the great Men and Commonalty of the Realm of England, called or to be called to the Kings Parliament. One Richard Chedder, Esquire, which came to the Parliament with Sir Thomas Brook one of the Knights of the Parliament for Somerset; and the said Thomas his menial Servant, was wounded and beaten by one John Savage; this being done in the Parliament time, he made a Fine and Ransome to the Kings will. 34 H.6.26 a. 8 H.4. 13, 20. 9 H.4.1. Parliament 5 H.4.

a Touching

Touching the choice, place and votes of Members of Parliament, I shall give you a brief account out of our Books of Law. Place is given to Knights in Parliaments, because they do import the presence of all the Freeholders of the several Shires for which they are chosen; and hereof see the Book in 2 R. 3. 12. a. Ireland *is not bound touching Land by the Statutes of* England, Quia non hic habent milites in Parliamento. *Farther by* Martin *the reason why ancient demesne is not bound and made privy to divers Statutes, is, because they are not contributary to the expences of Knights and Burgesses,* 7 H. 6. 35. Fitz. Jurisdict. 4.

And further by Nele *it is plainly*

plainly expreſſed, that the cauſe why Acts of Parliament are publick, is, for that every Man hath his Attorney in Parliament; to wit, the Knights of the Shire for the Country, and the Burgeſſes for the Cities and Borroughs. 21 E. 4. 59. a.

It ſeemes that in ancient time, there was but one Knight for a Shire: for the Statute of Staple made 27 E. 3. Staple 9. hath theſe words; Whereas good deliberation had with the Prelates, Dukes, Earles, Barons and great Men of the Counties, that is to ſay, of every County one for all the Counties, and of the Commons of Cities and Borroughs.

None ſhall be choſen Knights of the Parliament, unleſs they be reſiant within the Shire

where they shall be chosen the day of the date of the writ of the Summons of the Parliament; and that the Knights and Esquires, and others which shall be choosers of the Knights of the Shires, be also resiant within the same Shires, in manner and form as is aforesaid: and by the same Statute it is ordained and established, that the Citizens and Burgesses of the Cities and Borroughs be chosen men, Citizens and Burgesses resiant, abiding, and free in the same Cities and Boroughs, and none other in any wise.

1 H. 5. cap. 1.

The manner of Election of the Knights of the Parliament, is declared by Authority of Parliament as followeth, that is to say, at the next County to be holden after the delivery of the writ

writ of the Parliament, proclamation shall be made in the full County of the day and the place of the Parliament; and that all they that be then present, as well Suitors duly summoned for the same cause, as others, shall attend to the Election of their Knights for the Parliament; and then in the full County they shall proceed to the Election freely and indifferently, notwithstanding any Prayer or Commandment to the contrary: and after that they be chosen, the names of the Persons so chosen, be they present or absent, shall be written in an Indenture under the seals of all them that did chuse them, and tacked to the said writ of the Parliament; which Indenture so sealed and tacked, shall be 7 H. 4. cap. 15.

holden for the Sheriffs return of the ſaid Writ, touching the Knights of the Shires, 7 H. 4. cap. 15. And the Election ſhall be in every County of the Realm of England by people dwelling and reſiant in the ſame Counties, whereof every one ſhall have free Land or Tenements to the value of forty ſhillings by the year at the leaſt, above all charges; and that they that ſhall be ſo choſen, ſhall be abiding and reſiant within the ſame Counties; and ſuch as have the greateſt number, of them that may expend forty ſhillings by the year and above, as aforeſaid, ſhall be returned by the Sheriff of every County, Knights for the Parliament, by Indentures ſealed betwixt the ſaid Sheriffs, and the ſaid

7 H. 4. cap. 15.

ſaid Chuſers, ſo to be made; and every Sheriff of the Realm of England *ſhall have power by the ſaid authority to examine upon the Evangeliſt every ſuch Chuſer how much he may expend by the year, &c. Provided always, that he that may not expend forty ſhillings by the year, as aforeſaid, ſhall in no wiſe be Chuſer of the Knights for the Parliament,* 8 H 6. cap. 7.

8 H.6. cap. 7.

8 H.6. cap. 7.

Which Act of Parliament was afterwards expounded, that the Knights of all the Counties within the Realm of England, *to be choſen to come to the Parliament hereafter to be holden, ſhall be choſen in every County by people dwelling and reſiant in the ſame, whereof every man ſhall have Freehold to the Va-*

lue of forty shillings by the year at the least, above all charges, within the same County where any such Chuser will meddle with any such Election, 10. H. 6. cap. 2.

Against the Parliament holden Anno 27. *and* 28 Eliz. *a Writ issued to the Sheriff of* 27 and 28 Eliz. Norfolk, *for chusing of Knights and Burgesses; they elected one Mr.* Tresham *and Mr.* Fermour *for the Knights: after issued out another Writ of Election out of the Chancery, and they elected the said Mr.* Tresham *and Mr.* Heyden: *both writs were returned; and which of them should be Knights, was the Question: the matter was long debated, and at length resolved, that the first writ should stand, and the last void.* Ha-

Having shewed them briefly of the Manner of Election, onely a Word more of the continuance of their Authority being thus chosen and returned, namely, that as long as the same Parliament continueth, they shall still remain Knights of the Parliament; but being once dissolved, their power is throughly determined: for in a new Parliament, the Knights of the former Parliament cannot sit as Knights therein, except they be again to that end new elected, 4 E. 4. 44. b. *by* Cates-by. *Wherefore it is by him said there, That if a Parliament be summoned, and the Members of both Houses appear, and sit; during which their sitting, if the Parliament dissolve, by demise of the King,* 4 E. 4. 44. b

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the new King shall make a new Election.

The second day of the Parliament, Philip Courtney *being returned for one of the Knights of* Devon, *came before the King in Parliament; and for that he was accused of sundry haynous matters, prayed to be discharged until he were purged: the which the King granted, and on Munday after, at the request of the Commons, the King restored him to his place and good name, for that he had submitted himself to reasonable arbitrement,* 16 R. 2. n. 6.

I thought to have discoursed briefly touching the Fees of Knights and Burgesses of Parliament, and in what manner, and by what writ they are to be levyed,

levyed, and what Lands are chargeable or to be discharged thereof; but I omit this, in regard the levying of those wages hath been so long time out of use. Now I shall touch very lightly upon the manner of proceeding upon Bills in the House of Commons, and upon the manner of Attaynder in Parliament, and the manner of proceeding upon writs of errour in Parliament. Causes in the House of Commons are proceeded upon in two sorts, the one, If any man whatsoever do feele or do know the Commonwealth to be grieved with any Enormity, and be desirous for the Weale of his Country to have the same reformed, he may exhibit privately unto the Speaker a Bill made and framed in the manner

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ner of Law, with Preamble, purview and proviſo, containing the ſaid grief, and manner how he would have it redreſſed: which Bill the Speaker ſhall afterwards cauſe the Clerk of the Parliament openly to read in the ſame houſe, and after expound the ſame himſelf to the Houſe, and then upon the matter to fall to diſceptation and debating.

2. The other way is by motion made of the grievance, whereupon the Houſe may commit the matter to ſuch perſons as ſhall frame a Bill thereof; and ſo the matter likewiſe to come to debating: the reaſon of which ſpeech there by motion, is grounded on the Writ of Summons of the Parliament, and becauſe all men in the Houſe have not

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the skill aptly to frame a Bill.

But to propound any matter in the House by way of Question concerning their Opinions in any thing, it is not usual, but utterly to be rejected. And therefore in the Parliament, 31 Eliz. one Mr. Damport offered unto the House certain Questions to be considered of; which were then refused, and the House resolved upon the former orders.

In the Parliament holden 27 Eliz. when as a Bill concerning fraudulent gifts was dashed and rejected because of imperfections therein, nevertheless upon a motion made by Mr. Morish of the middle Temple, the House considered of the matter anew, and committed it to have

a new Bill drawn: which was done, and the ſame paſſed; and is the ſame Act now in print touching that matter.

15 E.4.2.a. *In Parliament, if the greater part of Knights and Burgeſſes aſſent to the making of an Act of Parliament, and the leſſer part will not agree to that Act; yet ſhall it be a good Act to dure in perpetuity: which greater number of voyces in the Higher Houſe may eaſily be known, in that they are ſeverally demanded, and the Clerk of the Houſe doth number them; but of the Houſe of Commons, otherwiſe it*

Pl.Com.Rice Thomas and Bulkly. 126.a. *is, for there the aſſent is tryed by the ſounding of voyces, all at one time; and therefore if the aſſent there be iſſuable, the party that ſo pleadeth it, ſhall ſay it was agreed by the greater number generally.*

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But ere they do proceed to the Queſtion, it is asked them, if they will ſo do: then is it ſaid by the Speaker to this effect: Such as will affirm the Bill, ſay, I; and ſuch as will not, ſay, No: the one or other being known by the greatneſs of the ſound of the voice, the matter is held ſo determined: and this may be done upon the firſt reading of a Bill; for in the Parliament holden in 31 Eliz. *there was an Act exhibited, that the iſſue in tayle might be charged in debt as heir; and upon the firſt reading was debated on both ſides, and at length rejected by like ſound of voyces. If the Bill be firſt exhibited in the Houſe of Commons, and there twice read,* 33 H. 6. 17. *then is it engroſſed, and ſo read again the third time: & if after* b. 18. a. 7 H. 7. 16. b.

upon

upon disputation thereof they do proceed to the Question, and so agree by the greater number of voyces to pass as an Act, then is it indorsed in this manner, Soit bayle as Seigniors: which Bill if it also be agreed upon by the Lords, it is likewise indorsed, Les Seigniors ont assentus; and so waiteth it onely the assent of the Monarch to make it an Act of Parliament: but if the Lords will alter the same, that may be done in two sorts, either by such meanes as doth include and stand with the doings of the Commons, as if the Commons grant Poundage for four years, and the Lords do grant it but for two years, this Bill shall not be redelivered unto the Commons, for that it standeth with their grant; but if

if the agreement of the Lords do not ſtand with the agreement of the Commons, then it is ſent againe to the Commons to be reviewed, and again to be debated, 33 H. 6. 17. b.

Concerning Attayndet by Parliament, the party which is to be attainted by Parliament ought firſt to be be indicted in ſome other Court, having Juriſdiction to receive the ſame; which enditement ought to be ſent into the higher Houſe of Parliament, by vertue of a Certiorari; *upon which inditement the party ſhall be called to anſwer before the Lord Steward of* England, *and other the Barons: but becauſe the Archbiſhops and Biſhops, being the Lords Spiritual, cannot aſſent unto the death of any perſon,*

Attainder by Parliament.

ſon, therefore they ſhall by their Proxie, make their Procurator, and depart the Houſe: the party indited ſhall be put to plead to the inditement; whereunto if he plead Not guilty, he ſhall be thereof tried by his Peers: and firſt the moſt puiſne Baron, ſhall be examined of his verdict by the Lord Steward, and ſo in order until all they, man by man, have delivered their Opinion of the matter, either in convicting the perſon ſtanding accuſed before them, or by clearing and acquitting him of the crime; if by their verdicts he be thought guilty of the offence, thereof is made an Act, which when it hath the conſent of the King, it is then eſteemed a Judgement, and the Offender thereby is attainted. Herein

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it to be noted, that this Verdict of the Lords is not upon their Oaths, but upon their Honour; for persons of so high degree should have so great care for the preservation of their Honour, as themselves or any other have for the safe-Guard of their Souls: which is admitted in that, and in all other Attaynders per Pares, *by the Peers, as well for that they are in that place not only as Triers of the Fact, but also Judges appointed over the fault; and never was it used that Judges should verifie their sentence upon attestation thereof upon their Oaths. Secondly, in this manner of trial they must think that the bread which is broken unto others by them, may by the just Judgement of God in like mea-*

sure be broken unto themselves, in that he whom they censure was in equal degree unto themselves. Thirdly, also for that where the Law requireth at the hands of other persons an Oath, it ordaineth that Barons should regard their Honors.

Secondly, it is to be noted, that the party so arraigned in Parliament, ought to be called to answer for himself: for the Law of England *is not so unreasonable to condemn any that will defend himself; and it hath heretofore been noted as an error in the judgement of the Parliament, when they have given a judgment in the cause of any private person, he being not called thereunto; and that in a civil matter of much less moment then is the cause of life and*

21 E. 3. 46. b.

and death: wherefore if the party may be had, and do not willingly and wilfully absent himself, he is thereunto called to answer: and therefore the Parliament in 37 and 38 H. 8. was freed of fault hereto upon the Attainder of the Duke of Norfolk, he then being in the Tower, for that it was signified by the Lord Burghley, Lord Treasurer, in the Star-chamber, when as Philip the last Earle of Arundel was called to answer in the Star-chamber, to an undutiful Letter written by him to her Majesty, that the said Duke was sent unto, and would not come to the Parliament: and the said Lord Treasurer affirmed that he then being of the lower House, was sent thither with

others: see for this, 1 Mar. Dyer, 93. p. 24.

1 H. 4. 1. a. 13 H. 8. 12. a. The Lord high Steward giveth the Judgement upon Attainder of treason, as appeareth by the Judgement given in Parliament, 21 R. 2. n. 155 16.

The Bills of Attainder in Parliament, are intituled, Placita Coronæ coram Domino Rege, in Parliamento suo.

Errours in Parliament reversed. Now touching the manner how errors in the Kings Courts committed, are reversed in Parliament, I shall be very brief.

22 E. 3. 3. a. 22 Ass. p. 22. 2 H. 7. 19. First, the parties that are grieved through any erroneous judgment given against them, ought to make their petition unto the King or Monarch, that

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it would please him to permit that erronious judgement as is given against them in such Courts, from whence they cannot further appeal, may be in Parliament, reviewed and reversed. This their Petition ought to contain the effect of their grief, and ought to be endorsed, Let right be done unto the parties; *In this manner,* Soit Droit fait as Parties.

Hereupon the Lord Chancellor of England *shall make a Writ of error, directed unto the Judges of such Courts where the error was committed, and now to be reversed by the Parliament; by vertue of which writ, the Lord chief Justice of* England *shall in person bring before the Lords in the higher* 1 H. 7. 19.

House, the said Petition, the said Writ of error, and the Rolls wherein is contained the judgment and proces wherein error is supposed, and shall there leave the same petition, writ, and the transcript of the said Record, but not the Record it self, with the Clerk of the Parliament, for that the Record it self shall be brought back again into the said Court, for these Reasons: First, because these Rolls do concern other matter. Secondly, because if judgment should be there affirmed, then the inferiour Court may have Record whereupon to award Execution. And lastly, for that it is a Rule, that when a Record is sent from an inferiour Court to a higher Court, it is never remanded; so that if the former

H. 7. 19. 2 E. 3. 3.

8 H. 5. f. Error 88. 23 Eliz. by. 375.

former judgement ſhould be affirmed in the Parliament, and the Parliament after diſſolved, the party plaintiff ſhould be without remedy; wherefore the record is brought back again, as aforeſaid. And thus the ſaid Petition indorſed, the Writ of Errour and the Tranſcript remaining in the hands of the Clerk of the Parliament, the matter ſhall be ſignified unto the Lord Steward, by whom, together with the other Lords Spiritual and Temporal, and with the Iudges, the ſame ſhall be determined; or otherwiſe the King may appoint out a Commiſſion, and thereby aſſigne certain Earles and Barons, who together with the Iudges ſhall determine the ſame; but the Commons ſhall not intermeddle therewith: 1 H. 7. 20. 22 E. 3. 3. 6.

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moreover, after that the Tranſcript is examined with the Record, and that the Record is ſent back to the former Court, the party plaintiff ought to aſſigne his Error in writing; and thereupon ſhall have a Scire facias *againſt the defendant*, ad audiendum errores; *which writ ſhall be returned the next Parliament enſuing, for that the common day of a* Scire facias *is forty days; but becauſe it is uncertain whether the Parliament ſhall be diſſolved or no, before that time, therefore the ſaid writ ſhall be returned the next Parliament; but if the writ be ſued forth at a Seſſion, of Parliament, the ſame ſhall be returned the next Seſſion after the ſaid errors aſſigned; and the* Scire facias *purſued, the plaintiff*

8 H5. f. tit. Error 88.

plaintiff ſhall not enter into Recogniſance to ſatisfie the judgment, if it ſhall happen to be given againſt him, or to render his body to priſon, in ſuch manner as is done in a writ of error in the upper Bench ſued upon an erronious judgment given in the Common place; but he ſhall ſtill remain in priſon: for if the party plaintiff ſhould be at large upon ſuch recogniſance acknowledged in Parliament, then if the Parliament be diſſolved, the party is at large, and the other without remedy. 1 H. 7. 20.

If the King upon ſuch Petition do appoint Commiſſioners for the determining of the Errors, and upon the Scire facias *the parties do appear, if the Parliament be diſſolved before the cauſe determined, the Commiſſioners* 22 E. 3. 3.

missioners after the Parliament is ended cannot proceed to the determination of the matter, or do any thing therein: but they must expect a new Session of Parliament.

If judgment be given in Parliament, and that also happen to be erroneous, there is no Court that can redress this Error, but the Parliament it self; for as much as it is the highest Court of the Land: and there is no higher Court in which he may have remedy, 7 H. 6. 29 a.

As touching the Courts, whose judgments are to be reversed in Parliament: First, it is to be noted, That all erroneous judgments given in the Kings Bench touching matter and substance of Law or matter in fact, were by the course of the com-

common Law to be reversed in Parliament, 7 H. 6. 28. because it was before the King himself; and therefore it was ordained by several Statutes made to avoid delay of suits, that once every year a Parliament should be holden. But now by a Statute made in the twenty seventh year of Queen Elizabeth, *it is ordained in the eighth Chapter, that all erroneous judgments in matters in Law, shall be considered and reversed by the Iustices of the Common Place, and the Barons of the Exchequer, or by six of them: but if the error in the Kings Bench be in matter of Proces, or proceeding, the same might alwayes have been reversed in the said Court of the Kings Bench, although if judgment be there*

36 E. 3. cap. 10.
50 E. 3.
1 R. 2.
2 R. 2.
27 Eliz. cap. 8.
7 H. 6. 28.
2 R. 3. 22.
27 H. 8. 16.
3 Eliz. Dyer, 19 b. p.

there given upon a plea, which is before discontinued, the same cannot be reversed but by Parliament.

In all cases in the Chancery, wherein the Lord Chancellor *is to adjudge according to the common Law, as in the repeal of Patents, actions against privi-ledged persons,* Audita Querela *upon Statutes, &c. There if erronious judgments be given, the same is to be reversed in the Kings Bench,* 14 Eliz. Dyer, 315. P. 100. *although some opinions in other Books have been to the contrary,* 37 H. 6. 14. a. *but in matter of conscience, their decrees are reversible by themselves.*

16 E. 3. fit. tit. brief. 651. Com. 393. 18 E. 3. 25. 17 Ass. p. 24. 42 Ass. p. 22. 27 H. 8. 16. b.

Thus have I briefly touched upon several things, which

upon

upon ſome other occaſion I ſhall inlarge. Touching ſuch matters as are proper for the Parliament, you ſhall ſee in an Excellent Book lately printed, being an exact Abridgement of the Records in the Tower of London, *from the Reign of King* Edward *the ſecond, unto King* Richard *the third, of all the Parliaments holden in each Kings Reign, and the ſeveral Acts in every Parliament; Collected by the learned payns of Sir* Robert Cotton, *and reviſed and publiſhed by the unwearied labors of* VVilliam Prynne *of* Lincolns-Inne, *Eſquire: a Book worthy of the Study of all the learned Gentlemen of this Nation. I conclude with my humble*

ble prayer, that the all-wise God would grant to this Nation, a setled Gouerment, and a quiet State, that our English Parliaments may recouer and enjoy their ancient honour and lustre.

John Doddridge.

From my Chamber in the middle Temple, the third of Dec. 1657.

The

The several Opinions of sundry Antiquaries, touching the Antiquity, Power, Order, State, Manner, Persons, and proceedings of the high Court of Parliament in England.

There is no king in the world, nor any subjects of any king, that have a greater and more binding, and yet a more free Council, then this in our Parliament in *England*: whose general Acts since all men must take knowledge of, it

may be profitable to every man to understand the Dignity, Order, and Antiquity thereof.

Soveraignty, the highest degree of Honour, is imported in the very Summons: For the king himself (*sive Regio*) as a Flower of the Crown, hath the absolute power of calling and dissolving it.

Order it self stands represented, when the Court is sitting: such is the Majestie of the Prince, the Gravity of the persons, & their State in proceeding. But this being often seen, and so best known; and the other unknown to many that sit, and often see the order of this Court: therefore we will treat principally of the Antiquity, Nature, Power and Jurisdiction of this high Court

Court of Parliament.

And first, of the Appellation, the word *Parliament*. Some derive it from Peers, *à potiore parte, quasi parium Conventum*, or as others say, *quasi parium lament'*: others more probably, from the French word *parler*; or that of the Greek, Ὁμιλεῖν, to treat and confer freely. The French Histories say, that this Name, in this sense, began at the Assembly of the Peers of *France*, *anno Dom.* 1200, but it appeareth to be more ancient with us, then of that time: for *Ingulphus*, who died 1009. saith, *In publico nostro Parliamento*, &c. taking it there for a Meering or Chapter of the Abbot. *Ingelo* King of *Polonia*, in the Polish State, calleth the Assembly *Generale Parliamentum*.

This may raise a doubt of the former etymologie of it from the French word *parler*. But no doubt the word was brought into the Realm by the French Monks, and after applied by the Statists, in the time of *H.* 1. to the General Council of the Kingdom.

But the like Assemblies as Parliaments are, (being much more ancient then the Parliament) underwent these names of old times. The Britains called them *Kyfrithin*, because Laws were therein made by the English Saxons in their English *Gradutis*, a Council sometimes (*Wittena Mota*) a Meeting of wise men. Sometimes of the Greek word *Synodos*. The Latine Authors of that Age call it *Consilium Magnatum, Curia altissima, præ-*

sentia

sentia Regis, Prelatorum, Procerumq; Collectorum; as appeareth by the Charter of *withlafias*, *anno* 833. and of King *Edgar*, *anno* 966.

And now to step *a Nomine ad Rem*; before the time of Soveraignty, Natures law directed men to the love of Society, and care to preserve it; and gained free consent even of lawless men, to admit of certain Customs as Laws, from hence framing matter of Form for a Commonwealth. But new springing mischiefs standing remedileſs by the elder Customs, caused, for remedy thereof, the calling of yearly Councils, the original no doubt of our after-Parliaments. And it shall appear, that our Kingdome, from as grounded Authority as any o-

ther Nation, can prove of old the practise of these great Assemblies, then called Counsels, now Parliaments. Those Sages, the *Druides*, most proper to this Isle, had yearly Conventions of their noblest and best people, in a middle consecrated Plot of this Kingdome; punishing with proscription from their Sacrifices, whoso obeyed not those general designes. Before the *Romans* arrived in this Island, *Cauſibulan*, who before, (*Communi Conſilio*) Chieftain of the Britaines forces, *Summa enim imperii, Belliq; Administrandi, Communi Conſilio, permiſſa eſt Cauſibulano.* The Ancient Laws of the Britaines, which (to the honor of our common Laws,) have their use to this day, were com-

composed in their common Counsels; the multitude at that time, (as possessed of nothing) had neither voice, nor place; Usury, Tribute, and greatness, having made them servile to their betters. And thus stood the State, till by conquest it was made a Province. So before our Britaines learned the Laws of their Victours, they held their common Counsels. *Tacitus* seemeth to ascribe much to the prosperous proceedings of the Romans against the Britaines, *quod non in Communi Consuluerunt*. After the entry of the Romans, who with their people brought their Laws, their Counsels were *Comitia*, as Parliaments compounded of the three degrees (*Senatores, Equestres,*

& *Plebei*,) and termed either *Curiata*, *Centuriata*, or *Tributa*: so called, for that the people were divided *per Curias*: in which Assembly, *Populus Suffragia tenebat*, distinguished by Seats, summoned by the Lictour, held in the City, had power to consult of Peace and War, and to dispose of lesser publique Offices. *Romulus* was founder hereof, and called it *lex Curiata*, and *Centuriata*; for the nobler people were divided *per Centurias*: for this the Counsel fore-sent by Edict, *Quis Dies, Comitiis Centuriatis futurus est*, summoned *per Cornicinem*, Assembled in *Campo Martio*, because all in Armes. In this were disposed the greater Magistracies and affairs: of that *Hostilius*

lius was the institutor. *Tully* gloried, in that he was called *lege Centuriata Tributa.* For in this the people Assembled by their Tribunes; much ageeing with that of *Curiata:* And the *leges peculiares* were general, *Jussu populi*, (*regnante Magistratu*) but not in force as Laws, until their Promulgation: for which cause the Country-Tribunes repaired to certain Faires, where Proclamation was made of their new Laws; and holding it *æquum ut quisquam non obligaretur ad id quod sine culpa sua ignorat.* But these freedoms of the people expired and vanished, as the Empire grew obsolete: And when the State declined, we (as other enfranchised Countries,) began to give Laws unto our selves.

ſelves. Therefore the Britains told *Auguſtine*, *Se non poſſe abſque ſuorum Conſenſu & licentia priſcis abdicare moribus.* And thus it ſtood in Britaine until the coming in of the Saxons.

Now that ſubſtance, and forme of Parliamentary Aſſemblies went all along the Saxon age, held during the Incurſion of the Danes, and was continued by the Conquerour in part: and when the Aſſembly of the three Eſtates formed the Parliament (as now we keep it) it ſhall by clear proof and preſidents appear. The ſtory of the Saxons and their Laws do ſhew, that they were of the ſame minde tranſplanted hither, as *Tacitus* ſaith the Germanes were: *Nec Regibus infinita poteſtas;*

vestas; de Minoribus Rebus principes consultant, de majoribus omnes: Rex Edwinus, saith *Beda*, lib. 2. cap. 13. *quod antequam fidem susciperit dixit, secum amicis, principibus, & Consiliariis suis collaturum.*

In a Charter of king *Ethelred*, it appeareth, *quod ad Synodale Consilium apud Cirencester universi Optimates simul convenerunt, & Africum Majestatem rerum, affectantem de hac patria profugum expulerunt.* Bertulphius held a Councel at *Knisbury* (*pro Regni Negotiis Congregat'*) to the which the west-Saxon King and people sent their Legat. *Ingulphus* hath many places of clear proof; but I will move but one: *In festo nativitatis beatæ Mariæ, cum universi Magnates Regni, per Regium edictum sum-*

Hist Eliensis, Lib. 2.

summoniti tam Archiepiscopi, Episcopi, Abbates, & Clerici, quam totius Regni Proceres, & Optimates London convenerunt, ad tractandum de negotiis publicis totius Regni consummatis omnibus, Rex Eldredus, coram Universis, Domino Turketillo, Abbati, Monachisque suis Accersitis, dedit Monasterium de Crowland, &c.

Here you may see the sampler of our Parliament.

But to come nearer: when King *Ina* establish'd his Lawes, he saith, *I Ina, King of the West-Saxons, have called all my Fatherhood, Aldermen, and my wisest Commons, with the godly men of my Kingdom, to consult of great and weighty Matters.* Here is represented in King *Ina*, the Kings Royal person: The Fatherhood in those ancient

ent dayes, were those whom we call Bishops, and therefore were termed Reverend Fathers: By Aldermen, the Nobility is meant: so honorable was the word *Alderman* of old times, that onely Noble Men were called Aldermen. By the Wisest Commons, is signified the Knights and Burgesses; and so is the Kings Writ at this day, *De discretioribus, & majus sufficientibus.* By godly Men is meant the Convocation-house; for that it onely consisteth of Religious men. To consult of great and weighty Matters, so is the Kings Writ at this day, *Pro quibusdam arduis, & urgentibus negotiis, nos Statum & defensionem Regni nostri Angliæ, & Ecclesiæ Anglicanæ Concernentibus.* The like was in King

Alphreds

Alphreds dayes, where the King, *sanctâ Episcopi, & sapientes Laici Statuerunt leges*: Calling the Statute-books *libri synodales*: All their Lawes going by way of Suffrage general, according to the Right of our Parliament. Wherefore King *Offa* having gathered *Consilia sapientum*, and viewing the best Lawes of *Ina*, *Alured*, and *Ethelred*, would not publish them until such time as the Text saith, *ostendenda hæc omnibus sapientibus nostris, & dixerunt omnes placet Custodire ea.*

But howsoever the government was by sundry Kings, and they continually attent to warre; The Saxon time held hardly one Forme of this great Assembly, or Councel; yet in *Canutus* his dayes, he having

ing Conquered all, and reduced that Heptarchie into a Monarchie, so that he could say, *Sub una Rege, & sub una lege Universum Angliæ Regnum regeretur*; It is plain that he held a Parliament, though not then so stiled, yet truly so to be accompted: and since that it hath all parts of our Parliament, we might rightly call it so. In the Preamble to his Lawes, thus he saith, *Convocato itaque Communi procerum comitatu, & Episcoporum, Abbatum, & ceterorum Nobilium, Nec non, & cetere Nobilitatis sapientiæque totius Angliæ concilio satagebat communia decreta, ut in quantum humana ratio valuit stabiliret.* After this Pious King, *Edward* the Confessor in a Charter made to Westminster Abbey, sealed

led, and signed the same at a Parliament; for thus he saith, *Hanc igitur Chartam Donationis, & libertatis in Dedicatione prædictæ Ecclesiæ recitare jussi Coram Episcopis, Abbatibus, Comitibus, & omnibus Optimatibus Angliæ omnique populo audiente, & vidente.*

But now to come to the Normans time after the Conquest; The two first Kings, the Conquerour and his son, *William Rufus*, reigned with their swords in their hands, absolutely of themselves, not admitting the former general Assemblies of the States, but permitting onely Provincial-Synods of the Clergy, for compounding of the Ecclesiastical causes; where nevertheless they sate as Presidents: and the Conquerour him-

himself did not challenge to himself so absolute a conquest; but the Laws that he made have this Title; *Hic Intimatur, quod Guliel-mus Rex, cum principibus suis Constituerat*: And in giving Laws to this Nation, *fecit summoniri per universos Consulatus Anglie Anglos nobiles, & sapientes sua lege eruditos, ut eorum & jura, & Consuetudines ab ipsis Archiepiscopis & Episcopis audiret*: And often doth he, and his Son *William*, call together *Archiepiscopos, Episcopos, Abbates, Comites, Barones, Vicecomites, cum suis Militibus ad Consulendum*: And likewise oftentimes afterwards until the time of *Henry* first, we find that there was Conven-

tus Episcoporum, Abbatum, & Procerum Regni, Londini in Palatio Regis. Wherefore Polydore Virgil and Paladine are much deceived, if they thought that Henry the first held the first Parliament within this Realm.

Neither do they seem to be of that Opinion, their words being, that *Regis ante tempora Henrici primi, non Consuerunt populi conventum Consultandi causa, nisi pro raro facere.* Therefore they might hold some, though not so often as did their successors: or agreeing with the Manuscript of *Canterbury*, that the first Parliament wherein the Commons were called aswel as the Peeres and Nobles, was 16 *H.* 1. For it

is

is true, that after the Conquest, until this time, the Commons were not called; and so at this time, they will have it first called by the name of a Parliament. Indeed if the policy of the time be noted, that may yeeld some difference. The Conqueror, and his Son *William*, being strangers, had no way to make permanent their victory, but by adding other Laws, and plucking up the old Roots of Families they found, and to plant them in themselves, as in new grounds: So for that age it was their Wisdome, to Rule, and not to advise with the people. But *Henry* the first, a new bud of the old stock, being a natural

Englishman himself, born at *Selby* in *Lincolnshire*; in love of the English Nation, by whom he sought his strength: The *Normans* at that time standing at terms of revolt from him, in favour of his Brother *Robert*, Duke of *Normandy*; he well understanding the love of his people, called them to those great Counsels, and setling the Authority of his Court of Parliament, so establish-ed his Throne, that neither Britaine, Dane, nor Saxon, could ever affect, till this day, disturbe either him or his posterity from the possession of this Land: The making of his Laws were by Act of Parliament: The Marriage of

his

his Daughter *Maude*; and the entayling of the Crown to her, were done by Act of Parliament: The accord between *Stephen* and him, was made by Parliament; And consequently all the succeeding Kings since, have ever concluded *grauda Regni*, onely in the Parliament. Yet all the times since, have not kept the said Form of the Assembling of the three Estates: for sometimes the Principal of the Nobility were onely called; and they at the end of the Parliament, were to impart to the other Barons, and their Country, what was done in the Parliament: Afterwards King *John* ordained that all the

Barons of *England* should come in their proper persons to the Parliament, being Summoned: 20 Knights Fees, after 20 *l.* a Fee, going to the value of an entire County; 15 Knights Fees, making an entire Baron, by which they sate: But King *H.* 3. after that he had smarted by the tumultuation of the Barons, their multitudes bringing confusion; ordained that those Earles and Barons onely to whom he directed his Writs should come unto the Parliament, and none else: And this which *Hen.* 3. began, his son *Edw.* 1. the Founder of our civil estate, calling the Barons, and appointing the Knights and Burgesses to be e-

elected, and of the Barons selected the wisest and such as pleased him, and did omit them and their children which did not equal them and their parents in wisdom and vertue: so held it on until the time of *Edward* the Third; there being a Writ then in use *de Admittendo fide dignas ad Colloquium*. Some also at that time being called, as *William* Earl of *Nottingham*, to attend upon the King with one hundred and twenty men at armes; *Lawrence* de *Hastings*, Earl of *Pembrook*, with fifty men at armes; and *William Clinton*, Earl of *Huntington*, with sixty men at armes: and so divers others. The calling was with distinction. The

Bishops and Barons *de Negotiis tractandum, & Consilium impensurii*; The Knights and Burgesses *ad faciendum & Consentiendum*. Those times had certain Ordinances besides Estatutes; for whatsoever the Lords and Commons agreed upon, was presently an Ordinance; and whatsoever the King gave his Royal Assent unto, it then became an Estatute: But if after the Parliament the King did Assent unto any Ordinance, it then became an Estatute: for the Kings answer is no more, but *le Roy le veult, ou le Roy s'avisera*. And before the Printing of Acts was used, they were always engrossed, and sealed with the

the great Seal of England, and proclaimed in every Shire; which use was continued from the time of *H.* 3. until *H.* 7. his days; and the form was thus: The King, by the advice of his Lords, Spiritual and Temporal, at the special instance of the Commons Assembled in Parliament, hath made and established these Ordinances and Statutes, to the honor of God, the good of the King, and Realm. In which words you may observe a summary of this great Counsel: First, the Persons, the three Estates. Secondly, the Ends, for which the Parliament was called, (viz.) for the honour of God, &c.

Thirdly

Thirdly, the Means, by Counsel, and consent. Each duty of the three degrees, is insinuated in these three things (*viz.*) Request of the Commons, Advise of the Lords, and Establishment of the King.

The first expressing the suitours: for the Royal Assent is never prayed by the Lords, but by the Speaker, the Mouth of the Commons.

The second distinguishing the house; The King hearing the causes debated onely by the Lords.

The third intimating that no Bill receiveth life, until the Royal Assent be given.

So by looking back, it is easie to see the great Antiquity

quity of this high Court, delivered as you see, from before the *Romans*; but never so dignified, as since Queen *Elizabeths* time. Now for the Nature of a Parliament, it is *Consilium*, and it is *Curia*; the power of it in matters hereditary, and personal; the proceedings of it in causes criminal and civil; the priviledges of it, *sedentibus, & servientibus*: The Offices, Officers, and Order, we leave to a further discourse: thus much onely touching the Antiquity of Parliaments in *England*.

Temps

Temps Edw. le Confessor le Sommons doit estre 40. Jours devant le Session.

THe Summons of the Clergy, Arch-Bishops, Bishops, Abbots, and Priours, that hold by a County, or a Barony, are summoned by Writ to come to the Parliament, and the King bears their expences of their remaining, and aboad; and all the other Deanes, Arch-Deacons, and Persons, are summoned to appear by two sufficient Proctors, which come with

with a duplicate of their Procurations, whereof one part remaineth with the Clerk of the Parliament, and the other with the Proctors.

2. The summons of the Laity, as Earls, Barons, and their Peers, which hold Lands and rents to the value of a County, or of a Barony (viz.) 20. Knights Fees, every Fee being accompted at 20 l. *per annum*, which make 400 l. or 13. Knights Fees and a half, which makes 400. Marks *per annum*; and none of the Laity of lesser condition, are namely and particularly called by Writ, except their presence be necessary for some special and extra-

ordinary cause.

3. Next the King sends his VVrits to the Cinque Ports, to chuse Barons to answer, alleadge, and do for their Baronies, as if all were present: a VVrit under the great Seal for the VVarden, for their expences 20. s.

4. Next the King sendeth his VVrits to the Sheriff of every Shire, to chuse two Knights of every Shire: a Mark for their expences.

5. Then the King sends his VVrits to the Cities of *London* and *Yorke*, or other Cities that are Counties, to chuse two grave Citizens: and they must also have a Mark for their expences.

6. And then the Kings VVrit

VVrit goeth to the Bailiffs of Boroughs to chuſe two Burgeſſes.

There muſt be two principal Clerks of the Parliament, and they muſt ſit in the midſt of the Juſtices, to enrole all the Pleas, and buſineſſes of the Parliament; not being Clerks to the Juſtices; for there is no Juſtice in *England* hath any power or Juriſdiction in the Parliament, but that the King calleth them thither to aſſiſt the Lords, and to hear and determine petitions: for the two Clerks are immediately ſubject to the King, except the King aſſigne ſome of the Juſtices to examine their Rolls. Theſe Clerks enrole all the

Judg-

Judgments given in the Parliament; and before the end of the Parliament, they deliver them over to the Treasurer, keeping a Transcript or Counter-roll to themselves, their wages a Mark a day.

Other Clerks were assigned by the King, to the Bishops; and others to the Proctours of the Clergy; another to the Earls, and Barons; another to the Knights; another also to the Citizens, and Burgesses: these set down all doubts and answers; and are present in their Counsels; and being at leisure, they assist the two principal Clerks to enrole the Acts of Parliament.

If

If a matter of difficulty, either concerning Peace or War, be moved in Parliament, the King wil enjoyn all the several degrees or tribes of the Parliament, the Bishops, the Proctours, the Barons, *&c.* to go apart into several places; and the case is to be delivered to their several Clerks: whereupon they are to debate amongst themselves, and to advise; and if all, or the greatest part do not agree, then the Lord Steward, the Lord Constable, and the Lord Marshal, are to chuse thirty five out of the number, two Bishops, three Proctors, two Earls, three Barons, five Knights, five Citizens, and five Burgesses:

gesses: and these thirty five men may chuse twelve, and these may descend to six, & these six to three, and these three to two, and these two to one; and so one person may determine a cause, except the King gainsay it; which he may do, during the Parliament: otherwise not.

There be three Degrees of businesses in the Parliament.

1. Warr, or matters touching the Kings person, the Queen, and the Kings children.

2. The publick businesses of the Commonwealth.

3. The private, and particular matters: yet these are to be handled, as the bills

Bills come in by priority.

The principal Cryer of the Parliament, the Chancellour, Treasurer, and Barons of the Exchequer, shall record the defaults of all those that are summoned.

A Sermon before the Parliament must be provided by the Arch-Bishop in whose diocess it is holden.

Proclamation must be made in the Hall, of Monastery where it is holden, and in the City or Town, that all men by a certain day bring in their petitions, &c.

The Chancellor, or the chief Justice of *England*, is to declare the cause of the Summons of the Parliament.

The King in state ever to be present in the Parliament, if he be not sick; if he be sick, to send for twelve persons of the house to see his person, and to satisfie the house of the cause of his absence.

For the session the King sits alone. The Arch-Bishop of *Canterbury* on his right hand, *Yorke* on his left hand; and so every man in his degree: and the Lord Steward is to see that every man sit amongst his Peers.

The Ushers of the Parliament stand within the door of the house, and the Cryer stands without the door, and the Kings guard stands a good way without the door, to keep tumults, and crowds

crowds of people from about the door.

All sit, except he that speaks, who must stand to speak, that all may hear.

None is to go in or out of the house, but at one door onely.

The King never requires aide, but for war; or to make his Son a Knight, or to marry his Daughter; and that in full Parliament.

Two Knights of the Shire are greater then any one Earle, or Baron; and two Proctours then any one Arch-Bishop or Bishop: and the King can hold his Parliament without any Arch-Bishop, Bishop, Earle, or Baron, with the

Commons alone: for there was a Parliament before there was any Barons: but if the Commons do not appear, there can be no Parliament, though all the great Peers of the Realm were present with the King: for the Procters, Knights, Citizens, and Burgesses of the Realm, do represent the whole Commons of the Realm; but the great Peers of the Realm, are present onely for themselves, and for no others.

The Parliament ought not to be dissolved as long as any Bill remains undiscussed; if it be, the King is perjured: and publick Proclamation is to be made in the Parliament, and in the pa-

Palace, that if any have any petition, he ought to come in; and if no answer be made, it is to be intended, that all remain satisfied.

Any man that will, may have a Transcript or Copie of the Acts before they be printed, paying for the same 10 l. 5 s. (or 10 l. 08 s. 01 d.) And the Parliament may be holden in any place where it shall please the King (*viz.*) at *Oxford*, at *Kenelworth*, at *Marlborough*, at *Glocester*, at *Acton-Burnel*, at *Leicester*, at the *Blackfryers*, &c. 14 *H.* 8.

DODDRIDGE.

Of the Antiquity of the Parliament of England.

THe Ancient, and first Parliament that I have read of, is that, in *Polydore Virgil*, in the reign of *H.* 1. in the 16 year, which was about the year of our Lord, 1116. And this was held at *Salisbury*, (as he saith) where were assembled with the King, all the Prelates, Nobles, and Commons, to consult for the publick Weale; and (as he thinketh) before that day, the King never called the people to consult and make

Laws

Laws: and he deriveth the name from the French word (*Parler.*) There is an ancient Roll in some mens hands which describeth the whole State and order of the Parliament; and the Title of it is, *De modo tenendi Parliamentum.* And it is further described *Parliamentum Regis Angliæ, & Angles summoveri tenebatur temporibus Regis Edwardi filii Ethelredi, qui modus Recitatus fuit, Coram Willielmo Duce Normaniæ Conquestore Rege Angliæ, & per ipsum approbatum.*

By this it should seem that Parliaments (as they are described in that Roll) were held in the time of *Edward* the holy; for he was the Son of *Ethelred*; for *Edward*

and the elder, was the Son of *Alfred*; and this *Edward* the holy lived about the year 1043. And by this it should also seem, that the Conqueror held a Parliament: In this it is first set down what Clergy then were called, which were not onely Bishops, but Abbots, and Priors that held *per Baroniam*: by which I gather, that they came not to that place as they were spiritual men; but by reason of the temporal honours they enjoy in the Commonwealth; for they have a place in the convocation-house, in respect of their spiritual function, and in that also they are a part in the Court of Parliament.

We

We read of a Parliament in 35 *E.* 1. in which were sixteen Abbots, and eight Priors; but how many of those were of the higher house I dare not define, or rather were of the house in general: for I know it is not clear, that there was not then a distinction of houses.

The first Title is, *De Clericis*, the second *De Laicis*, the third *de Militibus*, the fourth *De Civibus*, the fifth *De Burgensibus*: all other circumstances of place, times, orders, and such like are recited, which I omit to remember particularly, because I know it is a thing well known to all; and that is differeth from the or-

order of that Court now used.

The Court of Parliament hath a double power; the one to consult by way of deliberation for the good Government of the Commonwealth, and so it is *Consilium, non Curia*; another power it hath as a Court, in Administration of Justice.

The principal purpose of that Assembly seemeth to be for Consultation; for the Writs are *ad Consultandum & deliberandum*: but being Assembled, they may hold Plea of causes.

But this difference I find, that in criminal causes, both the upper house and lower house intermeddleth there-

therewith, as in Attainders onely; and the ſpiritual Lords do all go out of the houſe, and give their aſſents by Proxie, 10 *E.* 4. 6.

But in civil cauſes, as in VVrits of Error ſued there out of the Kings Bench, the upper houſe onely medleth, as is well deſcribed in the caſe 1 *Hen.* 7. 19, 20. in a VVrit of Error ſued by one *Flowerdue*, on a Replevin, wherein Judgment was given againſt him in the Kings Bench.

But we have an expreſs Authority in the 4 *H.* 7. 18. That in a criminal cauſe, the Commons muſt aſſent; for there the King and Lords did attaint one, and nothing was ſaid of the Commons,

mons; therefore by the Opinion of the Justices, the Act was held void, and the party restored.

The Peeres of *Scotland* were wont to come to our Parliament: for in 39 E. 3. 33. in a VVrit of ravishment, *de Garde* against *Gilbert Umfreville*, he demanded Judgment of the VVrit, because he was Earle of *Anguish*, and not so named in the VVrit: *Anguish* (saith the Plaintiff) is out of the Realm. I, but said the Defendant, I am summoned to Parliament by that name, and the VVrit was abated: this proveth that the Peeres of *Scotland* came to our Parliament for Justice: but *Littleton* saith,

20

20 *E.* 4. 6. that we ſhall implead an Earle, or Duke of *France*, by the name of Knight onely.

I need not dilate of the nature of the Parliament, that it is a body politique, or of what parts and members it conſiſteth, for that is very well underſtood of all learned men; neither of the order of it at this day, for moſt know that of their own experience: the priviledges of it are great, and may more ſafely be diſcuſſed what they are without the houſe, in regard of others, then what they are in the houſe for their liberties there.

Of the Antiquity of Parliament.

THat which we in English call Parliament, I suppose, and know, to have taken the name from the French, or Norman tongue, sounding upon the word *Barle*, or *Parler*, to speak, or discourse: In Latine I find that it was called before the Conquest by two names, the one called *Synodus*, taken from the Greek, which is used most for the Assembly of spiritual men, to treat of Divine causes; and so was practised when *Augustine* came to *Canterbury*,

ry, where the King of *Kent*, (called *Ethelbert*) gathered his Nobles, and people to understand the message, and preaching of *Augustine*; and again it is termed *Consiliatio*, as hereafter I shall set down, and hereafter in that sence, in *Anno Dom.* 833. *Withlasias Dux Wivcorum*, a great Lord or Peer amongst those of the Frennes, called *Girrii*, or *Girrogii*, in his Chapter for the foundation of the Abbey of *Ramsey*, in which he termeth *Egberte* King, and *Ahelwolf* his son, to be *Dominos suos*: he dateth his said Charter thus, *Datum apud Londini Civitatem ubi omnes Congregati sumus pro Consilio Capiendo Contra Danicos pira-*

tos littora Angliæ assidue infestantes: This mentioneth *Ingulphus*: so as it appeareth, when any imminent peril drew neer for the hurt of the Commonwealth, that then there were called the Nobility and wisemen (called in the History of *Eli*,) *Duces, Principes, Satrapæ, Rhetores, & Causidici*; also *Convenerunt Agelinum, Aldermanum, & Episcopos, Osmynum, & omnes meliores Concionatores de Com.* &c. And the same Author sheweth that *Brithmothus*, a most Noble Duke of *Northumberland*, was called Alderman, *id est senior vel Dux qui synodo magna Constantia restituit Regem Edgarem, & alios Monachos dicens nequaquam*

quam se ferre posse, ut Monachi ejicerentur de Regno, qui omnem Religionem tenuerunt, & coluerunt in Regno.

King Offa, in his Charter granted to the Abbey of Chertsey, hath these words: *Hanc libertatem, & omnia prædicta, & præfatum Monasterium pertinentia in synodali conventu in loco qui nominatur Æccleate, & testes consistentes concensi, & subscripsi, &c. in historia Chertsey penes me remanent.*

Canutus the Dane, beginning his Laws, sheweth plain, that he made the same by the Advice and Councel of a Parliament; and beginning thus, *Hæc est Consiliatio quam Canutus Rex meditatione vel decreto suorum*

sapientum consiliatus est cum suis sapientibus apud Wintoniam, &c. When I observe an old written Copie, with a Comment thereupon, they are expounded thus, *Consiliatio id est Institutio multorum facta Consilio, Idem Constitutionem pro Institutione, ponit, ut inuit hæc non instituta fuisse suo proprio Arbitrio, sed multorum Consilio.* And the said King *Canutus*, in the Preamble of his said Laws, sheweth, that he decreed his said Laws in this manner, *Convocato itaq; Comitum Procerumq; Conventu, ut Episcoporum Abbatum, & cæterorum Nobilium, nec non & cæteris nobilitatis sapientiæq; totius Angliæ Consilio satagebat communi decreto ut*

in quantum humana ratio valuit, ea quæ justâ fuerant stabiliret, &c. And in the said Preamble, is set down, that before his time, *Synodes*, or Assemblies for the Commonwealth, were very rare, saving *Ecclesiasticæ institutiones Synodorum, conventus apud Anglos Insitati adhuc fuerunt*: And the reason I suppose, was, that before *Canutus*, the Realm was governed by sundry Kings: but he having conquered them all, and reduced them into one Monarchie, alleadgeth in his Preamble, *Sicut sub uno Rege ita & una lege Universum Angliæ Regnum regeretur*: so as I conclude in this point, that before *Canutus*, there were no

Parliaments in *England*: the reason I have shewed before, which was the diversity and continual interwar between the *Heptarchy*, by him reduced to a Monarchy.

Since his time, I find that *Edward* the Confessor, in his Charter made to *Westminster*-Abbey, did seal and signe the same at a Parliament: for thus he saith, *Hanc Igitur donationis, & libertatis chartam in Die dedicationis prædictæ Ecclesiæ recitari jussi Coram Episcopis, Abbatibus, Comitibus, & omnibus optimatibus Angliæ, & omni populo audiente, & videntes*: where note these words, *Omnibus optimatibus Angliæ*, and *omni populi audiente*, & vi-

videntes; which cannot be, but in a general Assembly by Summons; and that is proved by the number and diversity of the witnesses, being Bishops, Abbots, Knights, Chancellors, Kings, Chaplains, Dukes, Earles, *Ministri*, *Milites*, &c.

And *William* the Conqueror, in his Charter of the Ratification of the liberties of that Church, after he hath subscribed the cross with his name, and besides him a great number of others of the Clergy and Nobility, in stead of *Cum multis aliis*, hath these words, *Multis præterea illustrissimæ virorum prosapiis, & Regum principibus diversi*

ordinis omissis qui similiter huic Confirmationi piissimo affectu, testes & fautores fuerunt, Hii etiam illo tempore a Regia potestate e diversis provinciis & urbibus ad Universalem Synodum pro causis Cujuslibet. Sanctæ Ecclesiæ audiendis & tractandis ad præscriptum celiberrimum Cænobium quod Westmonasterium dicitur Convocati, &c.

And in another Charter of his, to the said Abbey, are these words, *Anno Incarnationis Dom. 1081. regni etiam prænonominati gloriosi Regis Willielmi IV. Convenientibus in unum cunctis primis primatibus in nativitate.* D. N. I. C.

I read not in *Rufus* time of any Parliament.

But

But it appeareth in the Red Book of the Exchequer, that *H.* 1. before the Constitution, or making of his Laws, setteth down, *Quæ Communi Consilio & assensu Baronum Regni Angliæ*, &c. And then proceedeth *Omnes malas consuetudines quibus Regnum Angliæ opprimebatur, inde aufero quas ex parte suppono; Testibus Archiepiscopis, Episcopis, Baronibus, Comitibus, Vicecomitibus, & optimatibus Regni Angliæ apud Westmonaster' quando Coronatus fui.* I

The marriage of his daughter *Maude*, and the entayling of the Crown to her, and her heirs, was done by Parliament: the Accord also between him and *Stephen*, was done by Parliament;

and so consequently all matters of Importance were done and concluded in Parliament: and of such force is an Act of Parliament here in the governance of the State of the Realm, as it is deemed as an Oracle from Heaven, and resteth onely in the Kings and Queens power to qualifie and mitigate the severity thereof.

And thus much of the Antiquity.

I leave to others to discourse of the manner how they that are to treat therein, are to be called, and of their priviledges, and so end.

ACAR.

Of

Of the Antiquity of Parliaments.

THe diligent observers of the Antiquities of this Realm, do very well know, that Acts of Parliament are of so high a nature, that they do not onely tie the Inheritance of every man; but what is there ordained, every subject of the Land is bound to take notice of, at his peril; and because no man that should desire to inform himself therein, should be ignorant what was done in Parliament, as now we use printing of the Acts; so before printing, all

all the Ordinances affirmed by royal assent were recorded, and then published under the great Seal of *England*, with a general preface, and proclaimed in every Shire: this you may see continued from the time of *H.* 3. till about *H.* 7. his days; and ordinarily the form was thus: The King such a day, and such a place, as at *Westminster*, the 20 day of *April*, in the second year of the raign of King *H.* 6. by the advice of his Lords, spiritual and temporal, and at the special instance, and request of the Commons Assembled in Parliament, hath made and established these Ordinances, Acts, and Statutes, to the honour

of

of God, the good of the King and Realm, in form following; and then sets forth every Act in particular Chapters.

Here you may see the persons assembled, the end of their meeting, and the means to make it effectual: the persons which meet at the Parliament are the three Estates of the Realm; first the King. Secondly the Nobles, spiritual and temporal: Thirdly the Commons of the Land. The end of the meeting is to do something to Gods glory, the Kings good, and the benefit of the whole Land; and the means to effect the same, is by consultation and consent.

The

The particular duty of each of these three, seems to be insinuated in these words; first, the request of Commons; secondly, the advice of the Lords; thirdly, the establishment of the King: the Commons being most in number, and such as live in all the parts and places of the Land, are like to have most and best notice of such things as are most likely and meet to be provided for; and being weak in power, and most subject to feel such inconveniences, as great men may lay upon them; and therefore are fittest, either first to lay open their griefs, and pray Reformation; or though they be not able at the first with

Judg-

Judgment, to foresee ensuing dangers; yet the same being once proposed, and instantly apprehended, they may with instance importune allowance of such Laws, as may turn to their good: and our own experience teacheth us, that the Royal Assent is never prayed by the Lords, but by the Speaker, who is the mouth of the Commons.

In the presence of a prince, a common person will scarce have the audacity to speak, but when necessity maketh him crave help; and therefore 'tis properly said, That the King advised with the Lords; because he heareth the causes debated with them only, the Commons be-

being separated from consultation what were fit to propose in some other place.

Whatsoever the Lords and the Commons agree upon, is an Ordinance presently, though it be never engrossed, and sealed with the great Seal, and proclaimed in the counties, as the common course was: but it took not effect as a Statute, till the King declared his Royal Assent, which he might very well do by Writ after the Parliament, as well as during the Parliament, *per* 21 *E.* 3. *f.* 4. & 39 *E.* 3 *f.* 7. For the Kings answer is no more, but that he will be advised, whether he will assent or no;

no; and if he assent not till after, it is some doubt whether it be an Act of Parliament from the first day of the Parliament, or but from the time of the Royal Assent given.

The general Assent of the Realm to make Ordinances, and Laws, the ancient writers called *Consilium*, *Commune Consilium*, *Magnum Consilium*, *Placitum generale*, *Curia altissima*, *& Parliamentum generale*, *seu altissimum.*

The Saxons called it *Genote*, *Pirena*, *cor Pirena*, *Gemore*, *Ealpa*, *Zemots*, *Synodus.* I find not the word Parliament before the beginning of *E.* 1. fully in use amongst us. But the Assembly of

the three Estates to consult for the affairs of the Commonwealth, is as ancient as the Britains, and continued here in the time of the Saxons, Danes, and Normans.

I ground my opinion for the Britains from no expres authority, but by inference out of divers: DB. 1. Cæs. Com. lib. 5. cap. 5. saith, *Summa Imperii, Belliq; administrandi Communi Consilio, Comissa est Cassibulano.* So that here we have the name: and if you think that the Commons were not called to this consultation, hear what *Sethilius* saith of the Britains: *Apud hos, Populus Magnam partem primatum tenet*: exclude them of these ge-

general counsels, and you deprive them of this right. *Vitus in historiorum. Britanorum*, lib. 8. fol. 11. saith that *Arthurus victor cum Regio splendore, Londinum ingreditur, eaq; urbe Convocatis Clericis, Principibusq; suæ quidem potestatis, omnibus, Consilium, quid optime factu opus sit, capit Beda* lib. 2. cap. 2. saith the Britains told *Augustine*, *se non posse absq; suorum Concensu, & licentia priscis abdicare Moribus*: *Beda* lib. 2. cap. 13. *Rex Edwinus antequam fidem Christianum susciperit, dixit se cum amicis, Principibus, & Consiliariis suis Collaturum, & habiturum cum sapientibus Consilium*, &c.

The story of the Saxons, and their Laws make evi-

dent proof, that they were ſtill of the ſame mind tranſplanted hither, as *Tacitus* ſaith the Germans were; *Nec Regibus infinita poteſtas. De Minoribus Rebus Principes Conſultant, de Majoribus vero omnes.*

Hiſtoria Elienſis lib. 2. *de Dunelme, mortuo Rege Edgaro, Leſtius, (vel lepſius) a Deo ac ſancto Petro abſtulit cum Rapina Burch, & vendales, & Caterings poſtea, antea Elicibatur, generale placitum, apud Londinum, ad quod dum Duces, Principes, Satrapæ, Rectores, & Cauſidici, ex omni parte confluxerunt, beatus Ethelwaldus Leſtium in Jus protraxit, coram cunctis Injuriam patefecit, & bene aperta diſcuſſa, ea omnes Ethelwaldo per*

Ju-

Judicium rediderunt, Burch, & vendales, & Katheringas.

Abendon Lanboke, fol. 91. in Charta Regis Etheldredi Affricum cognomento puer Pronbroche Willemetrantum, & Syrene, a quadam vidua Eadfield appellata, violenter abstraxit, & quia cum Ducatusico contra Regem Etheldredum reus extitit omnes possessiones ejus Regis ditioni subactæ sunt, quod ad Synodale consilium ad Cirencester universi Optimates mei simul in unum convenerint, ad eundem Affricum, Majestatis reum, de hac patria profugum expulerum.

Ingulphus hath many places to the like purpose, but I will use but one: *Infesto*

Nativitatis beatæ Mariæ cum universi Magnates Regni per Regium edictum summoniti tam Archiepiscopi, Episcopi, & Abbates, quam ceteri totius Regni proceres, & optimates Londini convenerunt, ad tractandum, de Negotiis publicis totius Regni, Consummatis, omnibus coram universis, Domino Turketillo Abbati, Monachisq; suis accersitis, Rex Eldredus dedit Monasterium de Croyland, &c.

Polydore Virgil and *Paladine* are therefore much deceived, if they thought that *H.* 1. was the first that held any Parliament within this Realm: neither do they seem to be of that Opinion, their words are these, *Regis ante tempora H.* 1. *non Consue-*

eve-

jeverunt Populi Conventum, consultandi causa nisi pro raro facere: Yet I think their successors held Parliaments oftner then they did; yet nevertheless they held some, and *William* the Conqueror chalenged not so absolute a Conqest of this Land; but the Laws he made, have this Title, *Hic intimatur quid Gulielmus Rex cum principibus suis constituit*, &c. And I think all Kings may yeeld to consult with their people for that reason which *Alphred* used in the preface to his Laws: *Temeritatis videatur ex suis ipsius decretis quamquam plura literarum Monumenta consignari, cum interram sit quidem habet apud posteros vel habitura sint fidem;*

quæ nos Magni facimus. I have not seen *Arthur Halls* Book, whereby he disallow-eth the Commons to have any voice in Parliament; and for which he is disabled to be of the same house for ever: but I think he mista-keth some writers meaning, which spake onely of Ba-rons, or *Magnates*: but words are not much to be regarded, insomuch as what-soever the Parliament al-loweth, it bindeth as a Law, though it be set forth onely in the Kings name; as the Statute of *Glouc'*, and *Mag-na Charta*; or in the name of the Commons onely.

In the Kings Oath, the word *Populus* extendeth to the greatest subjects, and so

so doth it also in the Recognizance of the peace, or good behaviour, *quod bene se geret erga Populum cunctum*: If therefore he strike, or misdemean himself towards a Baron, the Recognizance is forfeited.

There is an expres Authority, that proveth, that the word *Magnates*, comprehendeth the people. *Hoveden* saith *Anno* 1170. *Rex celebrabat Magnum Consilium Londini cum Principibus, & Magnatibus terræ, de Coronatione A. filii sui, & D. insequent' Clerico, & populis Consentientibus, fecit ipse filium suum coronari.*

FRANCIS TATE.

Of

Of the Antiquity of Parliaments.

THat there were such like Assemblies as Parliaments now are, before the Romans arrival here, some gather by the words of *Cæsar*, lib. 5. *de Bello Gallico summa imperii, Belliq; administrandi, communi Consilio permissa est Cassibulano.* And for not such due holding of such common Counsels, *Tacitus* seemeth to refer the the happy proceedings of the Romans against the Britains, *Quod in Commuui non Consuluerunt.* These two Parlia-

liament-like Assemblies, the Britains do call *Kisrithin*, because Laws therein were enacted.

The English Saxons, as soon as they had setled themselves, held also the like Assemblies, which they called in their ancient English tongue *Gerediysse*, or a Counsel; sometimes *witena Mota*, as a meeting of wise men; and sometimes by the Greek word *Synoth*: The Latine Authors of that age, did call it *Consilium*, *Magnatum Conventus*, and *Praesentia Regis*, *Prelatorum*, *Procerumq*; *Collectorum*, as appeareth by the Charter of King *Edgar*, to the Abbey of *Crowland*, in the year 961. At which time it seemeth by the

the ſubſigning, that Abbeſſes had their voices there, and conſents aſwel as the Prelates and Nobles of the Land.

After the Norman Conqueſt, the two firſt Kings reigned with their ſwords in their hands, abſolutely of themſelves (*viz.*) the Conqueror, and *William Rufus* his Son, not admitting of themſelves any general Aſſemblies of the States of the Realm, but permitting onely provincial *Synodes* of the Clergy; for the compoſing of Eccleſiaſtical controverſies, as ſome write: wherein they themſelves ſate, nevertheleſs, as Preſidents; yet in their meetings (as it is in *Hovedon*, where he ſetteth

teth down the Lands of *William* the Conqueror, he did set them down: And by the Counsels of the Barons, *fecit summoniri per universos Consultatus Angliæ, Anglos, nobiles, & sapientes, & sua lege eruditos, ut eorum & jura & Consuetudines ab ipsis audiret: Electi igitur de singulis totius Patriæ Comitatibus viri Duodecim Jurejurando Confirmaverunt, primo ut quoad possint, recto tramite, neque ad dextram, neque ad sinistram partem divertentes, legem suarum Consuetudinem & sanctitatem patefecerint, nil prætermittentes, nil addentes, nil prævaricando Mutantes.*

And oftentimes he and his son *William* called together

ther the Arch-Biſhops, Biſhops, Abbots, *Archiepiſcopos, Epiſcopos, Abbates, Comites, Barones, Vicecomites, cum ſuis militibus*: and in the time following, we find that there was *conventum omnium Epiſcoporum, Abbatum, & procerum Regni Londini in palatio Regis.* But an old Manuſcript Book ſaith, That the firſt Parliament, wherein the Commons were called aſwel as the Prelates and Nobles, was in the ſixteenth year of *H.* 1. and then was firſt called by the name of Parliament, as ſome ſay from the Peeres, *a pariore parte, quaſi parium Conventus*: ſome derive it from the Peeres ridiculouſly, *quaſi Parium la-*

Florentius Vigornienſis.

Liber Cantuarnu.

men-

mentum: others more probably derive it from the French word *Parler*, as that of the Greek παραλάλιμ, that is to treat and to confer together.

Some of the French Historians, write, that this name, in this sence, began at an Assembly of the Peeres of *France*, about the yeer of Christ, 1200. But I find the word to have bin in use with us in this Realm long before: for *Ingulphus*, who died in the year 1109. used the word for the meeting or Chapter of the Abbot and Covent, writing thus: *Concessimus etiam tunc seriantiam nostræ Ecclesiæ, semiano de Leke, qui veniens coram conventu in publico Parliamento nostro si-*

similiter Juramentum præstitit, quod fidus & fidelis nobis existerit. Neither do I doubt but that the word was brought into this Realm by the French Monks, and first used by the Statists, in the time of *H.* 1. and since that time the authority of this Court hath stood setled; and the Communalty hath had their voice; which the said *H.* 1. granted unto them, being a natural Englishman himself; and in love of the English Nation, when at that time the Normans were on the terms of revolt from him, in favour of *Robert* his Brother, Duke of Normandy.

Now for the form of Assembling of these three sorts of

of Estates, in this high Court, I find no certainty till the time of King *John*.

It is apparent by a Petition, exhibited by the Lord *Fitz-Hugh*, in a Parliament holden at *Leicester*, 2 *H.* 1. that the principal Nobility were onely called; and they after the end of the Parliament to impart unto the Barons and their country what was done in the Parliament: Afterwards King *John* ordained, that all the Barons of *England* should come in their proper persons to the Parliament whensoever they were summoned. The form I will deliver out of the words of the petition.

Ipse Dominus Rex generalis

summonitiones, vicecomitibus cujuslibet Comitatus diligeret, ipsos injungendo, quod omnes Comites, & Barones, quorum nomina infra scripta fuerunt, & infra suas baliwas residentes, ipsi summonirent, ad veniendum ad Parliamentum Regis: & hoc non omittatur quacunq; ex causa, sub pœna Magni Contemptus: at which time, as it is in the Book intituled, *Modus tenendi Parliamentum*, all Earls which have Lands, Tenements, and Revenues, to the value of an entire County, at twenty Knights Fees, after twenty pound a Fee, or the value of an entire Barony, which is fifteen Knights Fees and a half, came to the Parliament: but when so

so great a multitude could not but breed tumultuous confusion; King *Henry* the third, after he had smarted by these confused multitudes of Barons, ordained that those Earls, and Barons, unto whom he directed his Writs, should onely come to the Parliament: so in the ancientest Summons that I have seen, which were in 49 *H.* 3. there were called besides the Earls onely 17 Barons. This which King *H.* 3. began, was fully perfected by King *Edward* the first his Son, who elected the wisest and such as pleased him; and likewise omitted them and their children in their summons, if they did not equal their Parents

in wiſdom, and other good parts and offices of valour and government: ſo we ſee in that time *Hilton*, *Corbet*, *Point*, *Leyburne*, *Vauſour*, &c. and ſuch other like, were ſummoned once or twice in Parliaments, and their poſterity wholly omitted afterwards: The Barons and Biſhops were called, *De Negotiis tractaturi, & Conſilium impenſuri*: The Knights and Burgeſſes, *ad faciendum, & conſentiendum iis quæ ibidem de communi Conſilio dicti Regni noſtri faciente Deo contigerit ordinari ſuper Negotiis antedictis*: And in the ſame words were the Clergy called, *ad faciendum, & conſenti-*

tiendum: so as it seemeth they had as much to do in Parliament then, as Knights of Shires, and Burgesses.

WILLIAM CAMDEN.

Of the Antiquity of Parliaments in England.

I Find in many ancient Hiſtories, that the Kings of this Land did uſe to call together the Nobility and Eſtates of the Realm to confer with them, eſpecially about matters of War, when any neceſſary occaſion did move them thereunto: But it is thought by *Holinſhead* in his Chronicle, that the firſt uſe of the Parliament did begin in the 17 year of *H.* 1. which ſince that time hath remained in force, and is fre-

frequented unto our times; insomuch as when any thing is to be decreed appertaining to the State of the Commonwealth, it shall not be received as a Law until by the Authority of that Assembly, it shall be established.

And because the house of Parliament should not be overcharged with multitudes, *E.* 1. did order that none of his Barons and Nobility should come unto this Assembly, but such as it should please the King to call by his Writ; and the rest to be chosen by voice of the Burgesses and Freeholders of the Shire where they did dwell; as Mr. *Camden* (*Clarenciaulx*) in his *Britannia* hath very

well remembred.

It is recorded amongst the Summons of Parliament, 35 *E.* 3. that there is no Writ, *de admittendo inter dignos ad Colloquium*: and amongst the Earls and Barons there is returned *Mary Countesse de Norff. Alienor Countesse de Ormond*, *Phillippa Countesse de March*, *Agnes Countesse de Pembrook*, and *Katherine Countesse* of *Athel.*

Upon the Parliament-Roll, *Anno* 14. (or 15.) *E.* 3. there are divers Writs directed to sundry Earls and Barons, *de veniendo ad Regem*: whereof the first is directed to *William* Earl of *Southampton*, to attend the King with 120 men at armes; *William de Clinton*, Earle of *Huntington*,

ton, with 60 men at armes; *Lawrence de Hastinges*, Earle of *Pembrook*, with 30 men at armes; and so likewise there were divers directed to others: and these several kinds of Summons, because I find them recorded amongst the Parliament-Rolls, I thought good to remember them to you.

I will conclude upon the Etymologie of the word, which is *Parliament*, which is to speak, and deliver a mans mind freely, in that Assembly; whereof the boldest speech, that ever I did read of to be spoken in the Kings presence, was spoken by *Roger Bigod*, Earle Marshal of *England*, unto King *Edward* the first, in the Parlia-

liament-house at *Salisbury*, where the King would have had him to go into *Gascoyne* for him with an Army: but when the Earle excused himself, saying, He would be be ready to go, if the King went himself: the King then in a chafe, said, By God, Sr. Earle, thou shalt either go, or hang: and I (said the Earle) swear the same Oath, that, I will neither go, nor hang: and so departed from the King without taking leave.

JOSEPH HOLLAND.

The Antiquity of Parliament.

The two Synewes of the Common-wealth are { *Punishment and Reward.*

AS touching the nature of the high Court of Parliament, it is nothing else but the Kings great Counsel, which he doth Assemble together upon occasion of interpreting, or abrogating old Laws, and making of new, as ill manners shall deserve, or for the punishment of evil doers,

ers, or the reward of the vertuous; wherein these four things are to be considered,

1. VVhereof this Court is composed.
2. VVhat matters are proper for it.
3. To what end it is ordained.

1. As for the thing it self, it is composed of an Head and a Body. The Head is the King, the Body are the Members of the Parliament. This Body again is subdivided into two parts: the upper house is divided partly of the Nobility Temporal, who are hereditary Councellors to the high Court of Parliament, by the honour of their Creation,

on, and Lands; and partly of the Bishops, spiritual men, who are likewise by vertue of their dignity, *& ad vitam*, of this Court. The other house is composed of Knights of the Shire, and Burgesses for the Towns: but because the number would be infinite for all Knights, Gentlemen, and Burgesses, to be present at every Parliament; therefore a certain number is selected out of that great Body, serving for that great Parliament, where their persons are the representations of that Body.

2. For the matters they ought to treat of, they ought therefore to be general, and rather of such matters

ters, as cannot well be performed without the Assembly of that general Body; and no more of the generals neither then necessity shall require: for as in *Corruptissima Republica plurimæ sunt leges*, so doth the life and strength of the Law consist not in heaping of infinite and confused numbers of Laws; but in the right interpretation, and due execution of good, and wholesome Laws.

3. The end for which the Parliament is ordained, being onely for the advancement of Gods glory, and establishment of the Weale of the King, and his people; it is no place for particular men to utter their private con-

conceits for ſatisfaction of their curioſities, or to make ſhew of their Eloquence, by ſpending the time with long ſtudied, and Eloquent Orations; for the reverence of God, their King and their Country being well ſetled in their hearts, will make them aſhamed of ſuch toyes, and remember that they are there as ſworn Counſellors to their King, to give their beſt advice for the furtherance of his ſervice, and flouriſhing Weale of this Sate.

4. And laſtly, to conſider the means how to bring all your labours to a good end, you muſt remember that you are Aſſembled by your lawful King, to give him your

your beſt advice in matters propoſed by him unto you, being of ſo high a nature, as beforeſaid: wherein you are gravely to deliberate; and upon your conſciences, plainly to determine how far thoſe things propounded do agree with the Weale, both of your King, and the Country; whoſe VVeals cannot be ſeparated.

FINIS.

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